

**Short-Term Water Right Lease Agreement  
for  
Leases of Existing Water Rights for Instream Use**

This Lease Agreement is between:

**Lessor:**

Eugene M. Underhill  
Colleen F. Underhill-Bergsma  
82541 Dufur Valley Road  
Dufur, OR 97021  
(541) 467-2551-Phone

The water rights to be leased are located in Wasco County.

**Lessee:**

Oregon Water Trust  
111 SW Naito Parkway  
Suite 404  
Portland, OR 97204  
(503) 226-9055-Phone  
(503) 226-3480-Fax

**Trustee**

Oregon Water Resources Department  
158 12th Street NE  
Salem OR 97310  
(503) 378-3739-Phone  
(503) 378-2496-Fax

**I.**

- 1.1 Lessor is the owner (*Exhibit A*) of property highlighted in *Exhibit B*.
- 1.2 Section 1.2 is not applicable.
- 1.3 *Exhibit C* contains a copy of the certificated rights attached to the property highlighted in *Exhibit B*. The rights are listed below as follows:

Certificate Nos. 64753, 55641, 35601, 52909, 67109 and T-6277

- 1.4 **Subject Water Rights.** Lessor proposes to lease a portion of C-64753, 67109 and T-6277 and all of the other water rights listed in 1.3, above.

The rights to be leased are further described as follows:

Water Right Identification No.: 64753

Source: Fifteenmile Creek

Priority date: 1885 (Tract 1) and 1856 (Tract 2)

Type of use: Irrigation

Place of use:

TRACT 1:

T 1S, R 13E, S 33, LOT 6 (NE $\frac{1}{4}$  SE $\frac{1}{4}$ ), 7.6 acres (not proposed to be leased)

T 1S, R 13E, S 33, NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 3.3 acres (not proposed to be leased)

Both as projected within DLC 37

T 1S, R 13E, S 34, NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 0.1 acre (not proposed to be leased)

As projected within DLC 37

T 1S, R 13E, S 34, LOT 3 (NE $\frac{1}{4}$  SW $\frac{1}{4}$ ), 2.4 acres (not proposed to be leased)

T 1S, R 13E, S 34, LOT 4 (NW $\frac{1}{4}$  SW $\frac{1}{4}$ ), 11 acres (not proposed to be leased)

TRACT 2:

T 1S, R 13E, S 33, SW $\frac{1}{4}$  NE $\frac{1}{4}$ , **9.0 acres**

T 1S, R 13E, S 33, SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 18.2 acres (not proposed to be leased)

T 1S, R 13E, S 33, SE $\frac{1}{4}$  NW $\frac{1}{4}$ , **6.5 acres**

T 1S, R 13E, S 33, NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 2.5 acres (**of which 1.5 are to be leased**)

T 1S, R 13E, S 33, NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 15.7 acres (not proposed to be leased)

T 1S, R 13E, S 33, NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 17.8 acres (**of which 1.6 are to be leased**)

T 1S, R 13E, S 34, NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 0.2 acre (not proposed to be leased)

T 1S, R 13E, S 34, SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 33.4 acres (not proposed to be leased)

T 1S, R 13E, S 34, SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 12.7 acres (not proposed to be leased)

T 1S, R 13E, S 34, NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 0.5 acre (not proposed to be leased)

T 1S, R 13E, S 34, NW $\frac{1}{4}$  SW $\frac{1}{4}$ , 7.3 acres (not proposed to be leased)

Number of acres, if for irrigation: 148.2 (**of which 18.6 are to be leased**)

Rate: 3.7 cfs (**of which 0.46 is to be leased**)

Duty: 1 acre foot per acre during any 30 day period up to July 1st and 3/4 acre foot per acre during any 30 day period thereafter not to exceed 3 acre feet per acre. The total not to exceed 444.6 acre feet (**of which 55.8 are being leased**) during the irrigation.

Season of use: Irrigation season of each year

Points of diversion (POD):

NE $\frac{1}{4}$  SW $\frac{1}{4}$ , SECTION 33, SW $\frac{1}{4}$  NW $\frac{1}{4}$ , SECTION 34, T 1S, R13E, W.M.;

SIGMAN DITCH - 2480 FEET NORTH AND 2250 FEET EAST FROM THE SW CORNER OF SECTION 33; CREEK - 1620 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 34.

Conditions or other limitations, if any: None

Water Right Identification No.: 55641

Source: Fifteenmile Creek

Priority date: 1885  
Type of use: Irrigation  
Place of use:  
T 1S, R 13E, S 34, Lot 5 (NW $\frac{1}{4}$  NW $\frac{1}{4}$ ), 8.0 acres  
Number of acres, if for irrigation: 8  
Rate: None  
Duty: 24 acre feet in any irrigation season, if available at the original point of Diversion in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 32, T1S, R13E, WM; Strachan Ditch - 1720 Feet North and 1830 feet West from SE corner Section 32.  
Season of use: Irrigation season of each year  
Point of diversion (POD):  
SW $\frac{1}{4}$  NW $\frac{1}{4}$ , as projected within Henderson DLC 37, Section 34, T1S, R13E, WM; 260 feet South and 690 feet West from NE corner Henderson DLC 37.  
Conditions or other limitations, if any: None

Water Right Identification No.: 35601  
Source: Fifteenmile Creek  
Priority date: April 21, 1964  
Type of use: Irrigation  
Place of use:  
T 1S, R 13E, S 31, SE $\frac{1}{4}$  SE $\frac{1}{4}$ , 3.8 acres  
T 1S, R 13E, S 32, NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 0.7 acre  
T 1S, R 13E, S 32, SW $\frac{1}{4}$  SW $\frac{1}{4}$ , 15.4 acres  
T 1S, R 13E, S 32, SE $\frac{1}{4}$  SW $\frac{1}{4}$ , 2.4 acres  
Number of acres, if for irrigation: 22.3  
Rate: 0.28 cfs  
Duty: 66.9 acre feet during the irrigation season of each year  
Season of use: Irrigation season of each year  
Point of diversion (POD):  
870' N. & 1060' E.; 980' N. & 1410' E. from SW cor. Sec. 32, being within SW $\frac{1}{4}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Sec. 32, T. 1 S., R. 13 E., W. M., county of Wasco. .  
Conditions or other limitations, if any: None

Water Right Identification No.: 52909  
Source: Fifteenmile Creek  
Priority date: November 26, 1976  
Type of use: Irrigation  
Place of use:  
T 1S, R 13E, S 31, NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 1.2 acres  
T 1S, R 13E, S 31, SE $\frac{1}{4}$  SE $\frac{1}{4}$ , 2.0 acres  
T 1S, R 13E, S 32, NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 9.5 acres (not proposed to be leased)  
T 1S, R 13E, S 32, NW $\frac{1}{4}$  SW $\frac{1}{4}$ , 1.4 acres  
T 1S, R 13E, S 32, SW $\frac{1}{4}$  SW $\frac{1}{4}$ , 1.3 acres  
T 1S, R 13E, S 32, NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 19.2 acres (not proposed to be leased)  
Number of acres, if for irrigation: 34.6 (of which 5.9 are to be leased)

Rate: 0.43 cfs (of which 0.07 is to be leased)

Duty: 103.8 acre feet (of which 17.7 acre feet are to be leased) during the irrigation season of each year.

Season of use: Irrigation season of each year

Point of diversion (POD):

SW $\frac{1}{4}$  SW $\frac{1}{4}$ ; NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 32, T1S, R13E, WM; 900 feet North and 1010 feet East; 1380 feet North and 2250 feet East, both from SW corner Section 32.

Conditions or other limitations, if any: None

Water Right Identification No.: 67109

Source: Fifteenmile Creek

Priority date: May 19, 1977

Type of use: Irrigation

Place of use:

T 1S, R 13E, S 33, NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 0.1 acre

As projected within DLC 37

T 1S, R 13E, S 33, LOT 2 (SW $\frac{1}{4}$  NE $\frac{1}{4}$ ), 6.3 acres

T 1S, R 13E, S 33, SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 0.1 acre

As projected within DLC 37

T 1S, R 13E, S 33, LOT 2 (SE $\frac{1}{4}$  NE $\frac{1}{4}$ ), 2.2 acres

T 1S, R 13E, S 33, SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 9.3 acres

T 1S, R 13E, S 33, NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 1.7 acres (not proposed to be leased)

Both as projected within DLC 37

T 1S, R 13E, S 33, LOT 4 (NE $\frac{1}{4}$  SW $\frac{1}{4}$ ), 0.9 acre (not proposed to be leased)

T 1S, R 13E, S 33, LOT 5 (NW $\frac{1}{4}$  SE $\frac{1}{4}$ ), 4.4 acres (not proposed to be leased)

T 1S, R 13E, S 33, NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 0.7 acre (not proposed to be leased)

T 1S, R 13E, S 34, NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 0.6 acre

T 1S, R 13E, S 34, NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 2.9 acres

T 1S, R 13E, S 34, SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 6.3 acres

T 1S, R 13E, S 34, SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 0.8 acre

All as projected within DLC 37

Number of acres, if for irrigation: 36.3 (of which 28.6 are to be leased)

Rate: 0.45 cfs (of which 0.35 is to be leased)

Duty: 108.9 acre feet (of which 85.8 are to be leased) during the irrigation season of each year

Season of use: Irrigation season of each year

Points of diversion (POD):

LOT 4 (NE $\frac{1}{4}$  SW $\frac{1}{4}$ ), SECTION 33; SW $\frac{1}{4}$  NW $\frac{1}{4}$ , AS PROJECTED WITHIN DLC 37, SECTION 34, T 1S, R13E, W.M.; 220 FEET NORTH FROM THE SW CORNER OF DLC 37; 260 FEET SOUTH AND 690 FEET WEST FROM THE NE CORNER OF DLC 37.

Conditions or other limitations, if any: None

Water Right Identification No.: T-6277

Source: Fifteenmile Creek

Priority date: 1856 and May 19, 1977

Type of use: Irrigation

Place of use:

1856:

T 1S, R 13E, S 33, NE¼ SE¼, 3.0 acres (not proposed to be leased)

T 1S, R 13E, S 33, NW¼ SE¼, 7.5 acres (not proposed to be leased)

May 19, 1977:

T 1S, R 13E, S 33, SW¼ NE¼, 9.5 acres

T 1S, R 13E, S 33, SE¼ NE¼, 1.0 acre

Number of acres, if for irrigation: 21 (of which 10.5 are to be leased)

Rate: 0.39 cfs (of which .13 is to be leased)

Duty: 31.5 acre feet during the irrigation season of each year (May 19, 1977 right).

Season of use: Irrigation season of each year

Point of diversion (POD):

NE¼ SW¼, SECTION 33, T 1 S, R 13 E, W.M.; 2480 FEET NORTH AND 2250 FEET EAST FROM THE SW CORNER OF SECTION 33.

Conditions or other limitations, if any: None

- 1.5 **Validity of Rights.** Lessor attest that the subject water rights are legally valid by having been beneficially used according to the terms of the rights within the last five years and, if the rights are for irrigation, on all lands indicated in *Exhibit D*.
- 1.6 **Lease.** Lessor agrees to lease the water rights listed in 1.4 for instream use for the term of this Agreement through Lessee to Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-77-077.
- 1.7 **Suspension of original use.** During the period of the lease, the owner agrees to suspend use of water allowed under the subject water rights and under any water right (C-35600) that is supplemental to the subject water rights.
- 1.8 **Water use reporting.** The Trustee agrees to fulfill legal obligations related to water use reporting.

## II.

- 2.1 **Public Use.** The public use served by the amount, timing and location of the instream use provided for under this lease is:

specific uses and needs identified in *Exhibit E* as signed off by ODFW.

- 2.2 **Instream use created by lease.** The instream use to be created is described as follows:

No.: 64753

Fifteenmile Creek, tributary to the Columbia River

Location: RM 33 to 2.75 (confluence of Eightmile Creek)

Priority date: 1856

Use: Described in section 2.1, above

Total volume: 1 acre foot per acre during any 30 day period up to July 1st and 3/4 acre foot per acre during any 30 day period thereafter not to exceed 3 acre feet per acre.

Total not to exceed 55.8 acre feet during the irrigation season.

Rate: 0.23 cfs

Period of use: July 1 - October 29

Conditions to prevent or mitigate injury (if any): The instream flow will be allocated on a daily basis from July 1 through October 29 in order that the seasonal duty limitation is not exceeded. There are no other conditions on the instream use.

No.: 55641

Fifteenmile Creek, tributary to the Columbia River

Location: RM 33 to 2.75 (confluence of Eightmile Creek)

Priority date: 1885

Use: Described in section 2.1, above

Total volume: 24 acre feet

Rate: 0.1 cfs

Period of use: July 1 until October 29

Conditions to prevent or mitigate injury (if any): The instream flow will be allocated on a daily average basis up to the described rate from July 1 until October 29, or until such time that the total duty for the irrigation season is met.

No.: 35601

Fifteenmile Creek, tributary to the Columbia River

Location: RM 33 to 2.75 (confluence of Eightmile Creek)

Priority date: April 21, 1964

Use: Described in section 2.1, above

Total volume: 66.9

Rate: 0.28 cfs

Period of use: July 1 until October 29

Conditions to prevent or mitigate injury (if any): The instream flow will be allocated on a daily average basis up to the described rate from July 1 until October 29, or until such time that the total duty for the irrigation season is met.

No.: 52909

Fifteenmile Creek, tributary to the Columbia River

Location: RM 33 to 2.75 (confluence of Eightmile Creek)

Priority date: November 26, 1976

Use: Described in section 2.1, above

Total volume: 103.8 acre feet **(of which 17.7 acre feet are to be leased)**

Rate: 0.43 cfs **(of which 0.07 cfs are to be leased)**

Period of use: July 1 until October 29

Conditions to prevent or mitigate injury (if any): The instream flow will be allocated on a daily average basis up to the described rate from July 1 until October 29, or until

such time that the total duty for the irrigation season is met.

No.: 67109

Fifteenmile Creek, tributary to the Columbia River

Location: RM 33 to 2.75 (confluence of Eightmile Creek)

Priority date: May 19, 1977

Use: Described in section 2.1, above

Total volume: 85.8 acre feet

Rate: 0.35 cfs

Period of use: July 1 until October 29

Conditions to prevent or mitigate injury (if any): The instream flow will be allocated on a daily average basis up to the described rate from July 1 until October 29, or until such time that the total duty for the irrigation season is met.

No.: T-6277

Fifteenmile Creek, tributary to the Columbia River

Location: RM 33 to 2.75 (confluence of Eightmile Creek)

Priority date: May 19, 1977

Use: Described in section 2.1, above

Total volume: 31.5 acre feet

Rate: 0.13 cfs

Period of use: July 1 until October 29

Conditions to prevent or mitigate injury (if any): The instream flow will be allocated on a daily average basis up to the described rate from July 1 until October 29, or until such time that the total duty for the irrigation season is met

- 2.3 **Term of lease.** This Lease shall commence on July 1, 1999 (not before the date of final execution by the parties) and continue through December 31, 2000.
- 2.4 **Compensation.** Lessor has agreed to lease the water rights herein to the Oregon Water Trust for cash and other considerations and for the benefit of the people of the state of Oregon.
- 2.5 **Flow protection.** The Trustee will regulate use of water from the source, subject to prior appropriation and the agency enforcement guidance, to assure the water is delivered to the point of diversion, and through the reach past junior downstream users, so long as flow is sufficient to meet the demand under priority date of the new instream use (see Section 2.2). No party is required to continuously measure the flow of the waterway described in Section 2.2.

#### Optional Provisions

- 2.6 **Additional monitoring.** Lessor/Lessee intends to manage and participate in the protection of the instream use by: possibly collecting information for calculating stream discharge.

2.7 **Modification or termination provisions.** None

**III.**


3 **Watermaster review.** By signature below, the watermaster for the district where the subject water rights are located verifies that:

3.1 Lessor is currently entitled to appropriate water under the water rights described in Section 1.4.

3.2 A suitable control is in place so that WRD staff may regulate use of water under the subject rights to ensure water is not diverted.

3.3 Allocation of water to the new instream use described in Section 2.2 during the term of this lease is not reasonably expected to cause injury to other rights to use water from the same source.

3.4 Necessary conditions to the proposed instream use: None

Watermaster:   
Larry Toll  
421 E. 7<sup>th</sup> Avenue  
Courthouse Annex B  
Room 218  
The Dalles, OR 97058  
(541) 298-4110-Phone  
(541) 298-2459-Fax

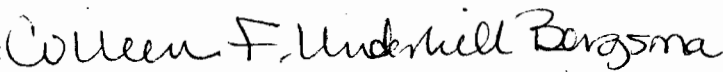
District: 3

Date: 4/20/1999

**IV.**

The Undersigned Lessor, Lessee and Trustee declare that, to the best of their knowledge and belief, the information contained in this lease is true, correct and complete.

Lessor #1:  Date: 3-10-99

X Lessor #2:  Date: 3-10-99

Lessee:  Date: 4-6-99



So ordered by Trustee: *Rafael D. Smiley*

Date: *7/9-99*

Director, Oregon Water Resources Department

Effective Date of Lease Agreement: *7/7-99*

Exhibits: (A through D are on exhibit at OWRD; E is attached)

- Exhibit A: Proof of property ownership (copy of property deed)
- Exhibit B: Maps of Lessor's property
- Exhibit C: Copies of water right certificates
- Exhibit D: Detailed map illustrating lands irrigated by subject right
- Exhibit E: Identification of public use to be served by instream use

**EXHIBIT E**

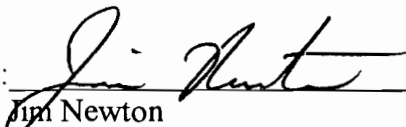
**PUBLIC USE PROVIDED BY INSTREAM WATER RIGHTS**

I believe that the water rights described as Certificate Nos. 64753, 55641, 35601, 52909, 67109 and T-6277 will provide for the conservation maintenance and enhancement of aquatic and fish life and fish habitat in Fifteenmile Creek, tributary to the Columbia River, if temporarily converted to instream use during the 1999 and 2000 irrigation seasons. Specifically, the following benefits will likely be provided:

- spawning and rearing habitat for winter steelhead will likely be improved within the designated reach; and
- passage for early migrating adult winter steelhead back into Fifteenmile Creek could be improved.

Dated: 3-22-99

Signed: \_\_\_\_\_



Jim Newton  
ODFW Fisheries Biologist  
The Dalles, Oregon